

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MICHAEL DAVID SCOTT,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE BANK OF NY MELLON TRUST)	Civil Action No. 1:24-cv-11614-AK
COMPANY, N.A. AS SUCCESSOR-IN-)	
INTEREST TO ALL PERMITTED)	
SUCCESSORS AND ASSIGNS OF JP)	
MORGAN CHASE BANK, AS TRUSTEE,)	
FOR CERTIFICATE HOLDERS OF)	
NOMURA ASSET ACCEPTANCE)	
CORPORATION, MORTGAGE PASS-)	
THROUGH CERTIFICATES, SERIES 2005-)	
AR2)	
)	
Defendants.)	
)	

DEFENDANT'S MOTION TO DISMISS
THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant The Bank of New York Mellon Trust Company, N.A. as Successor-in-Interest To All Permitted Successors and Assigns of JP Morgan Chase Bank, as Trustee, For Certificate Holders of Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2005-AR2 (“Defendant”) moves this Court to dismiss, with prejudice, the Complaint filed by Plaintiff Michael David Scott (“Plaintiff”) for failure to state a claim upon which relief may be granted. In support of this motion, Defendant relies upon its accompanying memorandum of law and the exhibits thereto.

WHEREFORE, Defendant prays that the Court grant this motion to dismiss, dismiss the Complaint with prejudice and without leave to amend, enter judgment in favor of Defendant, and grant such other and further relief that it deems appropriate.

Rule 7.1 Certification

Undersigned counsel hereby certifies that he conferred with the Plaintiff by telephone on July 15, 2024 regarding this motion including a good faith attempt to narrow the issues raised in it. Some of those discussions are referenced in the supporting memorandum of law.

Respectfully submitted,

The Bank of New York Mellon Trust Company, N.A., as Successor-in-Interest to All Permitted Successors and Assigns of JPMorgan Chase Bank, N.A., as Trustee, for Certificate Holders of Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates Series 2003-AC5,

By its counsel,

/s/ David E. Fialkow
David. E. Fialkow (BBO #666192)
david.fialkow@klgates.com
K&L GATES LLP
One Congress Street
Boston, MA 02114
+1 617 261 3126
+1 617 261 3175 (f)

Dated: July 17, 2024

CERTIFICATE OF SERVICE

I, David E. Fialkow certify that the foregoing filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this 17th day of July 2024.

/s/ David E. Fialkow

David E. Fialkow